



[FR-6301-N-02]

Regulatory and Administrative Requirement Flexibilities Available to Native American Programs During CY 2022 and CY 2023 to Tribal Grantees to Assist with Recovery and Relief Efforts on Behalf of Families Affected by Presidentially Declared Disasters

AGENCY: Office of Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This notification advises the public of waivers and flexibilities from HUD requirements for its Indian Housing Block Grant (IHBG), Indian Community Development Block Grant (ICDBG), and Native Hawaiian Housing Block Grant (NHHBG) grantees located in areas that are covered by Presidentially Declared Disasters (PDDs). A PDD is a major disaster or emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act that activates an array of federal programs to assist in the response and recovery efforts. When they occur, disasters and their aftermath impose significant barriers and challenges for housing programs to overcome or operate. To provide relief during such challenging times for its IHBG, ICDBG, and NHHBG grantees, HUD is publishing this standing Notice of regulatory and administrative requirement flexibilities to assist affected grantees. Instructions are provided below on how to apply for flexibilities. A grantee may request a waiver or flexibility of a HUD requirement not listed in this standing Notice and receive an expedited review of the request if the grantee demonstrates that the waiver or flexibility is needed to assist its disaster relief and recovery efforts. Please note that the waivers and flexibilities in this Notice do not apply to the various COVID-relief related programs administered by the Office of Native American Programs (IHBG-CARES, IHBG-ARP, ICDBG-CARES, ICDBG-ARP, and NHHBG-ARP) because HUD has issued separate waivers and alternative requirements that apply to those programs, as further outlined in the Implementation and Waiver Notices governing those programs.

DATES: This document announces the waivers and flexibilities set out in this document as of January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Hilary Atkin, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4108, Washington, DC 20410-5000, or email Hilary.C.Atkin@hud.gov. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

I. Flexibilities that are Available to PDD Tribes, Tribally Designated Housing Entities, and the Department of Hawaiian Homelands During CY 2022 and CY 2023

The following is a list of HUD requirement waivers and flexibilities available for IHBG, ICDBG, and NHHBG grantees located within PDD areas. Grantees may use any of the waivers and flexibilities below to assist their communities in addressing challenges and issues that result from a disaster covered by a PDD.

A. 24 CFR Part 1000 (IHBG)

1. Total Development Costs (24 CFR 1000.156, 1000.158, 1000.160, and 1000.162):

The IHBG regulations at 24 CFR part 1000 require that affordable housing under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) be of moderate design with a size and with amenities consistent with unassisted housing offered for sale in the Indian tribe's general geographic area to buyers who are at or below the area median income (AMI). To achieve this requirement the recipient must either: adopt written standards for its affordable housing programs that reflect the requirement specified, or use total development cost (TDC) limits published periodically by HUD that establish the maximum amount of funds (from all sources) that the recipient may use to develop or acquire/rehabilitate affordable housing. The limits provided by the TDC may not, without prior HUD approval, exceed by more than 10 percent the TDC maximum cost for the project. Non-dwelling structures used to support

an affordable housing activity must be of a design, size and with features or amenities that are reasonable and necessary to accomplish the purpose intended by the structures.

Disasters may result in disruptions to supply chains, lead to labor and contractor shortages, and result in overall increases in construction costs. Given this possibility of increased costs of resources and the urgency to rehabilitate homes following a disaster, HUD is waiving the TDC regulatory requirements in 24 CFR 1000.156, 1000.158, 1000.160, and 1000.162 relating to limitations on cost or design standards and TDC with respect to dwelling and non-dwelling units developed, acquired, or assisted with IHBG funding. Under this waiver, an IHBG recipient may exceed the current TDC maximum by 20 percent without HUD review or approval (other than notification by the grantee pursuant to the procedures outlined in Section II of this Notice). The recipient, however, must maintain documentation that indicates the dwelling units and non-dwelling structures developed, acquired, or assisted with this funding will, after the PDD, be for IHBG eligible families and the design, size, and amenities are moderate and comparable to housing in the area. The TDC limits can be exceeded by more than 20 percent if the recipient receives written approval from HUD Headquarters. This waiver applies to both single-family and multi-family housing, as well as non-dwelling structures.

2. Income Verification (24 CFR 1000.128):

24 CFR 1000.128 requires IHBG recipients to verify that a family is income eligible. Families are required to provide documentation to verify this determination, and a recipient is required to maintain that documentation. Families may be required by the IHBG recipient to periodically verify income after initial occupancy, and the recipient is required to maintain documentation.

As families may be displaced during a disaster and may not have access to their income documentation, HUD is waiving section 1000.128, and allowing the following:

a) IHBG recipients may deviate from their current written admissions and occupancy policies, and may allow less frequent income recertifications; and

b) IHBG recipients may carry out intake and other tasks necessary to verify income through alternative means if the IHBG recipient chooses to do so, including allowing income self-certification over the phone (with a written record by the IHBG recipient's staff), or through an email with a self-certification form signed by a family.

3. Assistance to Middle-Income Families Impacted by a Disaster (24 CFR 1000.104, 1000.106, 1000.108, and 1000.110):

Generally, Section 201 of NAHASDA and the IHBG regulations at 24 CFR 1000.104, 1000.106, 1000.108, and 1000.110 require that IHBG recipients limit assistance to low-income Native American families, with some exceptions for non-low-income families at 80-100 percent AMI, families over 100 percent of AMI, and essential families under section 201(b)(3) of NAHASDA. Section 201(b)(2) and 24 CFR 1000.110 provide that an IHBG recipient may aid a non-low-income family upon a documented determination by the recipient that there is a need for housing for such family that cannot reasonably be met without such assistance. 24 CFR 1000.110(c) provides that a recipient may use up to 10 percent of the amount planned for the tribal program year for families whose income falls within 80 to 100 percent of AMI without HUD approval. HUD approval is required if a recipient plans to use more than 10 percent of the amount planned for the tribal program year for such assistance or to provide housing for families with income over 100 percent of AMI. Finally, 24 CFR 1000.110(d) provides that non-low-income families cannot receive the same benefits provided low-income Indian families. The amount of rental assistance, homeownership assistance, and other assistance that non-low-income families may receive will be determined in accordance with the formula provided in that regulation.

Disasters may devastate and displace Native American families in a community of all incomes, make housing uninhabitable, damage community infrastructure, and result in a loss of life and property. IHBG recipients may find it in the public interest to aid non-low-income families that are displaced due to a disaster, including by using IHBG funds to provide such

assistance as temporary rental assistance to otherwise ineligible families in IHBG-assisted housing owned or operated by the recipient, housing such families in hotels/motels, and similar facilities, providing such families with necessary relocation assistance, and more. To help alleviate the impact of disasters on Tribal communities, HUD is waiving 24 CFR 1000.104, 1000.106, 1000.108, and 1000.110 to the extent necessary to allow for the following flexibilities:

- a) IHBG recipients in PDDs may exceed the 10 percent cap on serving Native American families whose income falls within 80 to 100 percent of AMI without HUD approval, provided the recipient decides that the families are impacted by the disaster and that there is a need for housing for such family that cannot reasonably be met without such assistance.
- b) IHBG recipients in PDDs may provide IHBG assistance to middle-income Native American families whose income is at or below 120 percent of AMI without HUD approval, provided the recipient decides that the families are impacted by the disaster and that there is a need for housing for such family that cannot reasonably be met without such assistance.

In all cases, assistance to these non-low-income families must still comply with limits on assistance specified in 24 CFR 1000.110(d). Additionally, all assistance must be temporary in nature. For instance, such families may receive temporary rental assistance that is time-limited pursuant to the recipient's policies but may not receive permanent tenant-based rental assistance with no specified end date. IHBG recipients must ensure that IHBG assistance provided does not result in a duplication of benefits. For example, IHBG recipients should not pay for costs that are already covered by private insurance or other Federal, State, or Tribal funds or programs. Finally, when providing this assistance, IHBG recipients must also maintain records documenting that all these criteria were met at the time that such assistance was provided.

B. 24 CFR Part 1003 (ICDBG)

1. Purchasing Equipment (24 CFR 1003.207(b)(1)(i)):

The purchase of equipment with ICDBG funds is generally ineligible under 24 CFR 1003.207(b)(1)(i), with some exceptions. Given the immediate need for certain equipment to carry out ICDBG eligible activities related to disaster recovery, such as construction equipment, necessary for clearance, construction, rehabilitation, and other recovery efforts in the aftermath of a disaster, HUD is waiving 24 CFR 1003.207(b)(1)(i) and authorizing the use of ICDBG funds for the purchase of equipment necessary to carry out ICDBG eligible activities that assist with clearance, rehabilitation, construction, and other uses related to housing, public facilities, improvements, and works, and other disaster-recovery related purposes. Equipment must be used for authorized program purposes, and any proceeds from the disposition of equipment will be considered ICDBG program income. HUD may issue further guidance in the future on the disposition of program income after grant closeout.

2. Emergency Payments for Up to Six Months (24 CFR 1003.207(b)(4)):

Under 24 CFR 1003.207(b)(4), the general rule is that ICDBG funds may not be used for income payments. For purposes of the ICDBG program, income payments mean a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities. However, ICDBG may be used to make emergency payments over a period of up to three months to the provider of such items or services on behalf of an individual or family.

Low- and moderate-income families impacted by disasters may have an immediate need for short term rental assistance, mortgage assistance, utility assistance, food, clothing, and similar services.

To provide additional relief to families impacted by disasters, HUD is waiving 24 CFR 1003.207(b)(4) to the extent necessary to allow ICDBG grant funds to be used to provide emergency payments for low- and moderate-income individuals or families impacted by a disaster. These grant funds may be used for items such as food, medicine, clothing, and other necessities, as well as rental, mortgage, and utility assistance, without regard for the 3-month

limitation in 24 CFR 1003.207(b)(4), but for a period not to exceed six months, unless further approved in writing by HUD on a case-by-case basis.

ICDBG grantees may establish lines of credit with third party providers (e.g., grocery stores) on behalf of specific beneficiary families, provided all expenses can be properly documented and all ICDBG funds used for this purpose are expended on eligible activities. In all cases, ICDBG grantees must ensure that proper documentation is maintained to ensure that all costs incurred are eligible. ICDBG grantees using this waiver flexibility must document, in their policies and procedures, how they will determine the necessary and reasonable amount of assistance to be provided.

C. 24 CFR Part 1006 (NHHBG)

1. Assistance to Middle-income Families Impacted by Disaster (24 CFR 1006.301(a)):

24 CFR 1006.301(a) describes families eligible for NHHBG assistance as low-income Native Hawaiian families who are eligible to reside on the Hawaiian homelands. Section 809(a)(2) of NAHASDA limits assistance for families who are not low-income to homeownership activities, as approved by HUD, to address a housing need that cannot be reasonably met without that assistance. Section 1006.301(d) requires DHHL to have written policies governing eligibility, admission, and occupancy of families for NHHBG-assisted housing.

Disasters may devastate and displace Native Hawaiian families in a community of all incomes, make housing uninhabitable, damage community infrastructure, and result in loss of life and property. DHHL may find it in the public interest to aid non-low-income families that are displaced due to a disaster by using NHHBG funds to provide such assistance as temporary mortgage assistance, temporary rental assistance on or off the Hawaiian homelands, housing such families in hotels, motels, or similar facilities, providing such families with necessary relocation assistance, and more. To help alleviate the impact of disasters on Native Hawaiian communities, HUD is waiving 24 CFR 1006.301(a) to allow DHHL more flexibility to provide

NHHBG assistance to families that are middle income (defined as 120 percent of AMI), provided the assistance is for homeownership activities (which may include short-term rental assistance to displaced homeowners), is temporary in nature, and DHHL determines that the families are impacted by the disaster and that there is a need for housing for such family that cannot reasonably be met without such assistance.

Under this waiver, Native Hawaiian families impacted by PDD can automatically be served provided their household income does not exceed 120 percent of AMI, there is no duplication of benefits, and all eligible criteria in this waiver are met. All assistance must be temporary in nature. For instance, such families may receive temporary rental assistance that is time-limited pursuant to DHHL's policies but may not receive permanent tenant-based rental assistance with no specified end date. DHHL must ensure that NHHBG assistance provided does not result in a duplication of benefits. For example, DHHL should not pay for costs that are already covered by private insurance or other Federal or State funds or programs. Further, when providing this assistance, DHHL must maintain records documenting that all these criteria were met at the time that such assistance was provided. HUD encourages DHHL to update its written policies to allow middle-income Native Hawaiian families who are impacted by disasters covered by a PDD to be considered eligible for NHHBG homeownership assistance and include a definition for 'temporary' assistance.

2. Income Verification (24 CFR 1006.320):

24 CFR 1006.320 requires DHHL to have written policies regarding tenant and homebuyer selection and criteria related to eligibility for NHHBG assistance. Many families whose homes were damaged or destroyed by the disaster may not have any documentation of income. DHHL may modify its policy and procedures to streamline any income verification and documentation requirements for families impacted by PDDs. This may include allowing income self-certification over the phone (with a written record by the DHHL's staff), or through an email

with a self-certification form signed by a family. This waiver applies only to families impacted by PDDs whose income documentation was destroyed or made difficult to access by the disaster.

II. Instructions

To use the waivers or flexibilities, grantees must provide notification in writing, preferably by email, to the Administrator in the [ONAP Area Office](#) serving their area before the grantee anticipates using the waiver or flexibility. The written notification should include the following details:

- Requestor's Tribe/TDHE/DHH, name, title, and contact information.
- Presidentially declared major disaster area(s) where the waivers will be used.
- Date on which the grantee anticipates the first use of the waiver or flexibility, and its expected duration (which must include a specific end date),and
- A list of the waivers and flexibilities the grantee will use.

III. Exceptions

An IHBG, ICDBG, or NHHBG grantee within in a PDD may request an exception of a HUD requirement not listed in Section I of this notice. HUD will only consider such exception requests subject to statutory limitations and pursuant to 24 CFR 5.110.

IV. Period of Use for Waivers and Flexibilities

Waivers and flexibilities provided in this Notice will remain available to grantees provided a grantee is using the waivers or flexibilities in response to the PDD or as part of the recovery process effort. HUD recommends that grantees clearly document the need for each waiver and flexibility in their records and ensure that a specific time period for which the grantee will use the waivers and flexibilities that the grantee specifies in its written notification to HUD, described in Section II of this Notice, is reasonably set and ties back to the response and recovery effort. If a grantee finds a need to extend the period for which it will use a waiver or flexibility beyond the end date initially set by the grantee in its initial written notification to aid in its ongoing recovery effort, the grantee should send HUD written notification of its intent to extend

the end date. The request must also demonstrate to HUD's satisfaction that the new time period is reasonably set and ties back to the response and recovery effort.

V. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

VI. Paperwork Reduction Act

The information collections referenced in this Notice have been approved by OMB pursuant to the Paperwork Reduction Act under, OMB Control Number 2577-0292.

Dominique G. Blom,
General Deputy Assistant Secretary for Public and Indian Housing.

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